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September 24, 2015

BY ECF

The Honorable Thomas P. Griesa
U.S. District Court for the Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street - Room 1630
New York, New York 10007

Re: *Sejas v. Republic of Argentina*, No. 04-cv-400 (TPG)
Sejas v. Republic of Argentina, No. 04-cv-401 (TPG)
Castro v. Republic of Argentina, No. 04-cv-506 (TPG)
Hickory Securities, Ltd. v. Republic of Argentina, No. 04-cv-936 (TPG)
Valls v. Republic of Argentina, No. 04-cv-937 (TPG)
Atza v. Republic of Argentina, No. 04-cv-1085 (TPG)
Puricelli v. Republic of Argentina, No. 04-cv-2117 (TPG)
Chorny v. Republic of Argentina, No. 04-cv-2118 (TPG)

Dear Judge Griesa:

I write pursuant to the Court's Orders of August 25, 2015 and September 2, 2015, directing the parties in the above-captioned cases to set forth their respective views concerning "the matters identified in items (1) through (4) at page nine" of the Second Circuit's decision in

Hon. Thomas P. Griesa, p. 2

Puricelli v. Republic of Argentina, No. 14-2104, 2015 WL 4716474 (2d Cir. Aug. 10, 2015) (“*Seijas III*”).

In *Seijas III*, the Court of Appeals remanded these cases with directions to follow the “specific instructions” in *Hickory Securities Ltd. v. Republic of Argentina*, 493 F. App’x 156 (2d Cir. 2012) (summary order) (“*Seijas II*”). Those instructions, as set out in *Seijas II* and *Seijas III*, are to

- (1) consider evidence with respect to the volume of bonds purchased in the secondary market after the start of the class periods that were not tendered in the debt exchange offers or are currently held by opt-out parties or litigants in other proceedings;
- (2) make findings as to a reasonably accurate, non-speculative estimate of that volume based on the evidence provided by the parties; [and]
- (3) account for such volume in any subsequent damage calculation such that an aggregate damage award would ‘roughly reflect’ the loss to each class.

Seijas III, 2015 WL 4716474 at *2; *Seijas II*, 493 F. App’x at 160.¹

The Second Circuit further instructed that (4) if no “reasonably accurate, non-speculative estimate” of aggregate damages could be made, then the Court should “determine how to proceed with awarding damages on an individual basis.” *Id*; *see also id.* (“Ultimately, if an aggregate approach cannot produce a reasonable approximation of the actual loss, the district court must adopt an individualized approach.”). The purpose of these instructions was to permit the parties and the Court to calculate damages so as to distinguish between continuous holders of

¹ The Second Circuit recently vacated the class modification Order entered in a related case, *Brecher v. Republic of Argentina*, No. 06 Civ. 15297(TPG), and remanded with these same instructions. *Brecher v. Republic of Argentina*, No. 14-4385, 2015 WL 543879, at *3 (2d Cir. Sept. 16, 2015).

Hon. Thomas P. Griesa, p. 3

interests in Republic bonds, who satisfy the class definition, and holders who purchased their interests in the secondary market after the class complaints were filed in 2004. *Id.* (vacating plaintiffs' aggregate judgments because they did not account for "the volume of bonds purchased in the secondary market after 2004 that were not tendered or are currently held by opt-outs or other litigants.").

The first question before the Court on remand is thus whether it is possible to account for secondary trading such that "reasonably-accurate, non-speculative" aggregate judgments may be entered in these cases. After the Second Circuit's remand in *Seijas II*, the Republic and plaintiffs exchanged discovery – including document productions by both parties – confirming that neither party had documents showing the amount of trading in class bonds. Plaintiffs then concluded that "to get the evidence that the Second Circuit requires, [they] would be forced to engage in extremely burdensome, time-consuming and difficult third-party discovery in the U.S. and abroad," Memorandum of Law, *Seijas v. Republic of Argentina*, No. 04 Civ. 400(TPG) (S.D.N.Y. Sept. 12, 2013), which would be "rife with legal and practical pitfalls," *id.* See also Hr'g Tr. 26:2-5, *Puricelli v. Republic of Argentina*, No. 14-2104 (2d Cir. June 17, 2015) (plaintiffs' counsel stating that relevant information "could only be gleamed [sic] through voluminous burdensome third-party discovery including discovery into individual accounts outside of the United States.") (Ex. A).

The Republic agrees with plaintiffs that determining class holdings will turn on third party discovery and may be unwieldy and prone to error. For example, it is not enough for plaintiffs to calculate how much aggregate trading there has been since the class complaints were filed; plaintiffs must also present evidence showing whether trades in the secondary market were

Hon. Thomas P. Griesa, p. 4

made by individuals or entities who were continuous holders up to the time of those trades, which will require tracing particular interests in fungible series of bonds from transaction to transaction.

If, notwithstanding these difficulties, plaintiffs now wish to take third-party discovery and make a final attempt to reasonably estimate aggregate damages, the Republic respectfully suggests that the Court enter a scheduling order consistent with proceedings generally used to calculate class damages. The Republic suggests a period during which the parties may take third-party discovery, followed by an interval for expert discovery, including deadlines for the exchange of expert reports and taking of expert depositions, as well as *Daubert* briefing, if any.²

After fact and expert discovery, if plaintiffs have not carried their burden on aggregate damages,³ then *Seijas III* requires them to proceed with establishing damages on an individual basis. *Seijas III*, 2015 WL 4716474, at *4. The Court recognized at the outset of these cases that judgments must be calculated based on individual class members presenting proof of their claims, noting in denying plaintiffs' initial motions for summary judgment that

plaintiffs have not only failed to provide ownership, but they have not even identified class members who might do so, other than the lead plaintiffs. . . . Surely, when the classes in these actions are well-defined,

² If the Court endorses this approach, counsel for the Republic and plaintiffs could meet and confer as to the form of such an order.

³ Plaintiffs, of course, bear the burden of proving damages. *Arch Ins. Co. v. Precision Stone, Inc.*, 584 F.3d 33, 40 (2d Cir. 2009) ("It is fundamental to the [New York] law of damages that one complaining of injury has the burden of proving the extent of the harm suffered.") (quoting *Berley Indus., Inc. v. City of New York*, 45 N.Y. 2d 683, 686 (1978)); *Trademark Research Corp. v. Maxwell Online, Inc.*, 995 F.2d 326, 334 (2d Cir. 1993) (party alleging breach of contract has burden of proving damages).

Hon. Thomas P. Griesa, p. 5

eligible plaintiffs should submit summary judgment motions with documentation of their bond ownership, and where that documentation is sufficient, summary judgment will be granted.

Order Denying Motions for Summary Judgment at 4, *Seijas v. Republic of Argentina*, No. 04 Civ. 401 (TPG) (S.D.N.Y. Feb. 15, 2006); *accord H.W. Urban GmbH v. Republic of Argentina*, No. 02 Civ. 5699(TPG), 2004 WL 307293, at *3 (S.D.N.Y. Feb. 17, 2004) (the Court has discretion to “require class members to come forward affirmatively and ‘present claims.’ . . . [T]he need to do this . . . is obvious because no judgment can be rendered without the presentation of such claims.”).

Plaintiffs themselves agree that individual plaintiffs must come forward and present proof of ownership in order to collect on any judgment, and, indeed, it could not be otherwise. *See* Hr’g Tr. 32:5-11, *Puricelli v. Republic of Argentina*, No. 14-2104 (2d Cir. June 17, 2015) (plaintiffs’ counsel noting that individual holders purporting to be members of a class will need to present claims) (Ex. A); Michael Adler Dep. Tr. at 84:17-18, dated Oct. 13, 2010 (to calculate amount of continuously held bond interests, “[y]ou have to ask the people how much they own.”) (Ex. B). Thus, the only question remaining is *when* individuals plaintiffs must present proof of ownership; there is no reason why that process cannot take place before judgment instead of afterwards, and under the Second Circuit’s rulings, that is when it *must* take place if plaintiffs cannot satisfy their burden of proving non-speculative, aggregate damages to

Hon. Thomas P. Griesa, p. 6

continuous holders after accounting for all secondary market trading since the commencement of these actions.

Respectfully submitted,

A handwritten signature consisting of the letters "CB" in a cursive script.

Carmine D. Boccuzzi

cc: Counsel of Record (by ECF)

Attachments

Exhibit A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X

IN THE MATTER OF:

EDUARDO PURICELLI, ET AL.,

Plaintiffs,

Index No.:
14-2104 (L)

Vs.

THE REPUBLIC OF ARGENTINA,

Defendant.

-----X

June 17, 2015

HELD AT: DANIEL PATRICK MOYNIHAN
UNITED STATES COURTHOUSE
500 Pearl Street
New York, NY 10007

BEFORE: HONORABLE PIERRE N. LEVAL
HONORABLE CHESTER J. STRAUB
HONORABLE REENA RAGGI
Judges

APPEARANCES: CARMINE D. BOCCUZZI JR., ESQ.
CLEARY GOTTLIEB STEEN & HAMILTON LLP

JENNIFER SCULLION, ESQ.
PROSKAUER ROSE LLP

TRANSCRIBERS: DEANA M. SMITH
LYNN M. REINHARDT

W I T N E S S E S

<u>PETITIONER:</u>		RE	RE	V.
<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>DIRECT</u>	<u>CROSS</u>
				<u>D.</u> <u>J</u>

<u>RESPONDENT:</u>		RE	RE	V.
<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>DIRECT</u>	<u>CROSS</u>
				<u>D.</u> <u>J</u>

E X H I B I T S

<u>PETITIONER:</u>			
<u>IDENTIFICATION</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>IN EV.</u>

<u>RESPONDENT:</u>			
<u>IDENTIFICATION</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>IN EV.</u>

1 JUDGE REENA RAGGI: We'll hear next from the
2 parties in Puricelli v. Argentina. Mr. Boccuzzi,
3 please.

4 MR. CARMINE BOCCUZZI: Thank you Your Honor.
5 May it please the Court? Carmine Boccuzzi from Cleary
6 Gottlieb on behalf of the Appellant, the Republic of
7 Argentina. The District Court committed legal error
8 when it did not follow this Court's mandated
9 instruction in the Hickory Securities case which in
10 the briefs we refer to as SAOS2 [phonetic]. SAOS2 was
11 the second time this Court had vacated so-called
12 aggregate judgments and in SAOS2, the Court--this Court
13 sent back to the District Court the question of
14 determining the secondary trading in the market in
15 these bonds that needs to be taken into account in
16 order for the District Court to determine a reasonably
17 accurate aggregate judgment. And if it could not do
18 so, then to proceed with damages on an individualized
19 basis.

20 JUDGE LEVAL: The problem--the problem that
21 led to what our Court said in the SAOS2 case was the
22 inability of the method used by the District Court to
23 fix the judgment to match with the definition of the
24 class. Now the District Court made, what seems to me,
25 a reasonable assumption that that problem was

1 eliminated by changing the definition of the class.
2 Now, we could, if we accepted your argument, we could
3 say, "Well the District Court wasn't allowed to
4 deviate from that mandate unless we permitted it." And
5 we could then say, "All right, we allow you to do this
6 District Court." Go back to the District Court, the
7 District Court will do it again, and then you'll be
8 back here tomorrow. But wouldn't that just be running
9 around the block for no, for no purpose. It's clear
10 you are correct, if a Court of Appeals says to a
11 District Court, "This is what you've got to do," and
12 the District Court goes and refuses to do it that
13 would be one thing. But the reason for the
14 instruction was the failure of the definition of the
15 class and the calculation of the judgment to match.
16 And the District Court recognized that it was never
17 going to match with that definition of the class so it
18 changed the class definition. And, that seems to me
19 to be reasonable, and we could say, "Well you couldn't
20 do that without our permission." So, now you go back
21 and do it, and then we'd just be spinning wheels. So,
22 I don't think that's going to get you terribly far.

23 MR. BOCCUZZI: I don't think the Court has
24 to speak in that harsh voice to the District Court. I
25 think though...

1 JUDGE LEVAL: Well, we can say it in a
2 gentle way.

3 [laughter]

4 MR. BOCCUZZI: Well the-exactly. The
5 mandate rule encompasses both the specific
6 instructions given by this Court but also what was
7 impliedly decided by the Court. And the issue that
8 was before the Court both times, was the class—the
9 aggregate class judgment. But also, these Plaintiffs
10 did not appeal, at any time, the continuous holder
11 definition that was the basis for the two appeals.
12 They could have done so and the Benz V [phonetic] case
13 and the Spampo [phonetic] case talk about if you
14 didn't do it, you can't now improve your position by
15 basically bringing that appeal to the District Court
16 when we've been now, for ten years under this class
17 definition. But, the other point was, I don't think
18 this Court's reasoning in SAOS1 and SAOS2 was so
19 narrow to just speak as to the miss-match between the
20 judgments and there amounts and the class definition.
21 The problem of secondary trading in these bonds will
22 plague the judgments under their definition as well.
23 Because they just define this class to be anyone who
24 holds a bond—an Argentine defaulted bond—who isn't
25 otherwise suing at any time. And so...

JUDGE LEVAL: There is a problem with the District Court's class definition. It seems to me that it says holder and doesn't, but it doesn't say when. But, one of the points you've made in your brief is ascertainability. And you say that that this class is not ascertainable because of the trading in the secondary market. But, it seems to me that would lead to the conclusion, if we accepted your argument, lead to the conclusion that there can never be a class action on behalf of holders of a bearer security where their complaint is simply we want to be paid in accordance with the terms of the instrument. Because, as long as the instrument is a bearer instrument, it can go on being traded and, it seems to me they are ascertainable. But, they're not ascertainable until the date when they present them, say, "Here's my security, I want to be paid." Why is that not sufficient and satisfactory for a class action on behalf of a class consisted of the holders of a bearer security whose complaint is that at some point in the past there was a false statement that misled them, but they just say, "Our complaint is we want to be paid in accordance with the terms of the instrument." The

25 MB. BOCCUZZI: I think the key Judge Levy

1 is when they come forward and say, "Here's my piece of
2 paper, I want to be paid." All we're saying, and this
3 is consistent with what this Court discussed in the
4 VISA check case, is that that needs to come before the
5 time of judgment...

6 JUDGE LEVAL: Why? Why?

7 MR. BOCCUZZI: ...Because, otherwise we are
8 left with what SAOS2 said we can't have, which is you
9 enter a judgment, and then you have a claims process
10 after, and what you're going to have in that claims
11 process is a verification that the judgment will be
12 overstated. And the reason why...

13 JUDGE LEVAL: Why should the judgment be
14 overstated?

15 MR. BOCCUZZI: ...Because...

JUDGE LEVAL: Argentina knows the volume of outstanding bonds. Argentina knows that's ascertainable, the volume of outstanding bonds and the people who are entitled to it, are the holders of those bonds. It doesn't matter who they are. Whoever comes in with the bonds and says, "Here's a bond, I'm entitled to payment." They're ascertainable as of the time that they present them for payment to the Court's agent established to disburse the judgments. Why isn't that—why doesn't that satisfy the

1 ascertainability?

2 MR. BOCCUZZI: I would say two things. Our
3 experience in the SAOS1 and SAOS2 showed that in each
4 situation when the judge entered those aggregate
5 judgments, within a month or two months, someone
6 holding class bonds brought an individual lawsuit.
7 And so, that would show, that person is not in the
8 class. And that means that the aggregate judgment was
9 overstated by the amount that that individual then
10 came forward and said, "I'm here, I'm not part of that
11 class." And this happened now. If we take the
12 measuring point, the date, last April 2014, when the
13 Court modified the class definition, since then there
14 have been \$111.0 million of claims by individuals
15 holding class bonds. And so, the point is, it's just
16 because these—everybody agrees these bonds continue to
17 trade...

18 JUDGE LEVAL: They trade and then people opt
19 out of the class after the judgment and after the time
20 when, when they can present them to the Court's—well,
21 I mean that hasn't happened yet, here...

22 MR. BOCCUZZI: But, we see that it could
23 happen and has happened.

24 JUDGE LEVAL: So, why-why wouldn't that be
25 accounted for, why couldn't a procedure simply be

1 established by Argentina when somebody who is the
2 holder of \$100.0 million of bonds brings a separate
3 action to collect on those bonds. Then Argentina
4 could come to the Court and say, "Please deduct \$100.0
5 million from the present judgment, and let us take
6 back \$100.0 million from what we've put up."

7 MR. BOCCUZZI: Because I think that would be
8 inconsistent with what the Court said in SAOS2, in
9 footnote one, which it says, "First entering aggregate
10 judgments inconsistent with the foregoing and then
11 moving forward with an individual claims process would
12 not allay our concerns." What you just described
13 Judge Leval is exactly that process. We're accepting
14 that this judgment will be overstated and someday
15 subject to correction when someone comes forward and
16 says, "I'm not part of that class."

17 JUDGE LEVAL: I am correct, am I not, that
18 the argument that you are making would mean that you
19 could, if we accepted that argument, there could never
20 be a class action on the hold-on behalf of the holders
21 of bearer bonds or bearer securities—bearer bonds,
22 bearer obligations, whose claim is simply, "We want to
23 be paid in accordance with what's stated on the face
24 of..."

25 MR. BOCCUZZI: I think you can have a class

1 for purposes of setting liability, and then you would
2 move into what VISA check described as three possible
3 alternatives, either you decertify the class for
4 purposes of individual judgments, you appoint a
5 special master to do a claims process. And there was
6 one other procedure, I can't remember. But it
7 wouldn't knock out the concept of class action in
8 these context, because you could do exactly what—and
9 with the District Court, for years said he imagined
10 would happen, "I'll enter summary judgment, and then
11 people..." And it's provided for under 23(C) or (D)
12 [phonetic], the Rule has changed, the ability to
13 present claims as part of the class process. So ...

14 JUDGE LEVAL: I have to ask you to slow down
15 and say that again. How—what I understand you to be
16 saying is there is a process by which you can have a
17 class action on behalf of the holders of bearer
18 securities, bearer debt securities whose claim is, "We
19 just want to be paid in accordance with what the bond
20 entitles us to." So, how does the Court do that?
21 Legitimately...

22 MR. BOCCUZZI: You could certify a class and
23 you could have a ruling that says this debt is owed.
24 Which is what happened here. There was summary
25 judgment on the question of liability. But then for

1 purposes of damages, you would follow some of the
2 procedures that are suggested in this Court's ruling
3 in the VISA Check case where it talked about coming
4 forward to present claims, decertifying the class,
5 etc. And so, that would fit with then having
6 judgments that are accurate and what the Court was
7 talking about in SAOS1 and SAOS2, and would also be
8 consistent with what Judge Brousseau [phonetic] held in
9 the early days of these class actions after they were
10 certified which he said, Rule 23 allows for the
11 presentation of claims. Which is, i.e., the
12 Plaintiffs coming forward and saying what you've been
13 saying, "I have this bond, I'm owed this amount of
14 money." That should be reflected in a judgment.

15 JUDGE LEVAL: - - seem to be completely
16 irrelevant to the problem. Those two cases, the-our
17 earlier cases seem to be irrelevant to the problem we
18 have now. Because what the concern themselves with is
19 the impossibility of knowing whether people had
20 acquired their bonds through secondary process and the
21 irrelevancy to this whole process of having held
22 continuously. What matters is holding security at the
23 time that it's presented for payment. That's what
24 matters, not how long you've held it or where you got,
25 or when you got it or from whom. So, I don't see that

those cases really have any bearing on what's now
before us.

3 MR. BOCCUZZI: I would just say, the
4 continuous holder requirement. The requirement that's
5 been in this case since they were certified back in
6 2008--has - - 2005, reflects, first of all, the Judge's
7 original understanding what would make these classes
8 ascertainable and management. Because, think about
9 it, the case law, the Folsom X [phonetic] case which
10 we cite says there has to be an administrative way to
11 identify who is in the class and what the Plaintiffs
12 are proposing is that, well, we say it's anyone who
13 holds a bond at any time. So, that means, I hold a
14 bond...

15 JUDGE LEVAL: No. Not at any time. Not any
16 time. Somebody who held the bond three years ago and
17 no longer holds it, is not entitled to be paid
18 obviously for that bond. It's somebody who holds the
19 bond and presents it for payment under the judgment.

20 MR. BOCCUZZI: But, again, that does make
21 the teaching of SAOS1 and SAOS2 relevant. Because if
22 you don't have a match-up, you're going to have an
23 overstated judgment.

24 JUDGE RAGGI: May I ask a question that goes
25 to the match-up? Are these bonds identifiable in any

1 way? Are they numbered so that they can be traced?

2 MR. BOCCUZZI: Yes, and just—Judge Leval was
3 using the term bearer bonds—they're not technically
4 bearer bonds the way we think about bearer bonds. You
5 have a physical piece of paper and you clip coupons.
6 They're global registered bonds and what we're dealing
7 with are eight series of those bonds. You've seen
8 their eight class actions...

9 JUDGE RAGGI: -- bonds are traceable? I
10 ask this because, for purposes of ascertainability, I
11 understand your concern about, you have two buyers A
12 and B, one does not opt out, the other opts out on the
13 opt out date. They both sell to C, C now holds both
14 types of bonds—some opted out, some not. Sells to D,
15 and I mean all of this goes on and on. Figuring out
16 when you've got the person who shows up holding the
17 bond and says, "I want to be paid." Whether that bond
18 was a bond that there was an opt out exercised on or
19 not, strikes me as a difficult question unless you can
20 tell me that they are identifiable through some kind
21 of registry.

22 MR. BOCCUZZI: They're not. And for any
23 given series of bonds, so the eight series, they're
24 completely fungible. So, if I...

25 JUDGE LEVAL: -- not numbered.

1 MR. BOCCUZZI: No. What all your account
2 statement would say is you have \$100.00 of principal
3 of this cusip number, where that cusip number is the
4 number that applies to everyone else in that holding
5 that series of bonds.

6 JUDGE RAGGI: All right, so the continuous
7 holding requirement tried to eliminate that problem
8 that I just identified because it didn't have people
9 who had played in the secondary market at all.

10 MR. BOCCUZZI: Correct.

11 JUDGE RAGGI: All right. Other than the
12 example I gave you of not being able to distinguish
13 opt out bonds from not opt out bonds, is there
14 something—some other ascertainability problem with the
15 class that the District Judge has now certified?

16 MR. BOCCUZZI: The ascertainability problem
17 is in addition...

18 JUDGE RAGGI: No, just with respect to
19 ascertainability, is it the opt out problem that I've
20 just identified?

21 MR. BOCCUZZI: Well, I would also say,
22 ascertainability requires, if we just stood here today
23 and said who was in this class, I don't think it's
24 sufficiently ascertainable to say, "Well, person X is
25 in the class, and anyone he might sell to between now

1 and the time of judgment." And that may be sold on
2 and on. That's just not an ascertainable class. We
3 don't know the identity of the people in the bonds...

4 JUDGE RAGGI: It will be whoever holds that
5 bond.

6 MR. BOCCUZZI: But, the problem is the
7 person who holds that bond may then bring their own
8 lawsuit, and they may do so after the judgment is
9 entered, and then you have the overstated judgment
10 situation. That's...

11 JUDGE RAGGI: Wouldn't that depend on
12 whether the opt out date would have passed, so we
13 would know at that point how many people had opted in
14 and out. My concern is we can't tell...

15 MR. BOCCUZZI: You can't tell...

16 JUDGE RAGGI: ...down the road what the opt
17 out is.

18 MR. BOCCUZZI: Right.

19 JUDGE RAGGI: But, but is—if you could, if
20 you could be sure that these were the bonds that had
21 not opted out, why would you care other than whose got
22 them in hand at the time they're looking for payment.

23 MR. BOCCUZZI: But I think that you also get
24 into the issue of the notice requirements. Because
25 the Ninth Circuit case that we cite, Valentino...

JUDGE RAGGI: - - ascertainability - - .

2 MR. BOCCUZZI: Right. But it raises the
3 problem of that case put it well, in terms of words,
4 we don't know today who may be in the class, so how
5 can we have adequate notice to reach those people?
6 So, whether you have the ability to parse opt out
7 versus opt out bonds, which you don't if they're sold
8 on. You're facing the situation where someone who
9 buys in the secondary market and then brings a claim
10 on their own, and then someone, either, I guess the
11 Plaintiff class counsel will say, "Stop you're a
12 renegade class member." Or the Republic would say,
13 "I'm being now sued twice with respect to the same
14 interest, because this fellow should be counted in the
15 class." That person would then be litigating the
16 notice question and all that ancillary litigation over
17 that, and if they prevail, yet again, we are in a
18 situation of an overstated judgment. So, I don't
19 think the Court's modification answers to secondary
20 trading problem and I think the two statements on the
21 record by the Court when we had the hearing were
22 relevant. The judge expressed his frustration which I
23 know is shared by many about the non-payment of
24 judgments. But SAOS1 said, while that might be a
25 practical consideration, we still need to have

1 aggregate judgments. And the judge also mentioned the
2 streamlining of judgments which means this is all
3 heading towards SAOS4 which would be the exact same
4 methodology rejected in the first two SAOS cases and
5 that real presence of overstated judgments which SAOS1
6 and SAOS2 said we can't have.

7 JUDGE LEVAL: So, what brings a separate
8 suit? If a bond holder brings a separate suit, that
9 bond holder, I would assume, cannot continue to
10 maintain that separate suit and at the same time sell
11 the bond. Right? If I bring a suit against Argentina
12 based on \$100.0 million of bonds that I hold, I can't
13 after bring the suit, sell the bond, but continue to
14 maintain the suit.

15 MR. BOCCUZZI: Right.

16 JUDGE LEVAL: So, how would Argentina in
17 such—how would Argentina protect itself in such a
18 suit. Would the—Argentina demand that the bonds that
19 are the subject of the suit be put up with the Court
20 so that the bond holder can't continue to maintain the
21 suit without continuing to hold the bonds?

22 MR. BOCCUZZI: What happens is, the bond
23 holder who brings an individual claim, when they move
24 for summary judgment, must have reasonably recent
25 evidence, an account statement that they hold the

1 bond. When the Court enters summary judgment, then
2 there's a judgment that's entered and the judgment
3 says that there's a court order restricting that
4 person from moving the bonds or selling the bonds
5 without court approval.

6 JUDGE LEVAL: So, I don't understand why—
7 assuming that a judgment were entered for X billion
8 dollars, or whatever the number is, X dollars, based
9 on the outstanding volume of the bonds. And then as
10 you hypothesized in your answer to me earlier, bond
11 holders bring suits elsewhere through another route,
12 which would disqualify them from participating in
13 this—from bringing participants in this class, why can't
14 Argentina then go to the District Court that entered
15 the judgment in this case, and say, "Deduct that from
16 the amount of the judgment and give us back that
17 amount of money that we put up." Why doesn't that—why
18 wouldn't such a procedure completely take care of the
19 problem that you're raising?

20 MR. BOCCUZZI: Because, meanwhile, these
21 folks with this as posited overstated judgments,
22 because there's someone out there who's now got a bond
23 who has or may be bringing a new lawsuit. Say, they
24 haven't done it yet. They're seeking to attach assets
25 or get injunctions that are based on an amount of

1 payment owed to them that are based on that larger
2 overstated amount. And SAOS says we can't have that.
3 Which is fair.

4 JUDGE LEVAL: Then if they take an action
5 that is incompatible with their class membership,
6 they—that amount is to—the amount on behalf of which
7 they take that action is deducted from the judgment
8 and is given back to Argentina. I don't see why it's
9 a problem.

10 MR. BOCCUZZI: Well, I think it's a problem
11 for the...

12 JUDGE LEVAL: You do anticipate paying out
13 the entire amount—I mean you perhaps don't—but at
14 least in theory. In theory, Argentina has to pay out
15 the amount of the bonds, right?

16 MR. BOCCUZZI: That's the claim that's being
17 brought.

18 JUDGE LEVAL: Well, but that's—but that's
19 what Argentina has to anticipate, no? You are liable
20 for that amount.

21 MR. BOCCUZZI: But we're liable for the
22 amount, not double that amount or more than that
23 amount. - - suits.

24 JUDGE LEVAL: So, my proposition is when
25 anybody brings a separate root action, you have the

entitlement to protect yourself from double liability by immediately deducting the amount that is claimed in the separate suit from the amount that's held here and getting that back, if you've put it up.

5 MR. BOCCUZZI: All I can say is, Your Honor,
6 I think that's just inconsistent with SAOS1 and SAOS2.
7 It's a possible mechanism, but unless that second
8 person has brought the suit, it's unknown, it's
9 unknown to us, it's unknown to these folks and they're
10 pursuing remedies based on the larger inflated
11 judgment which SAOS1 and SAOS2 say you can't do. And
12 the question becomes after a while, since the Rules
13 Enabling Act does not require, or does not permit the
14 enlargements of substantive rights, when will they
15 finally be required to come forward and present their
16 claim so that the situation now...

17 JUDGE LEVAL: Is there anything in law that
18 prevents what I am proposing being done? Is there
19 anything that—say the District Judge enters a judgment
20 for X billion dollars, and then because of the
21 bringing of subsequent suits, Argentina goes to the
22 District Court and says, "Well, there's been a claim
23 for \$386 million in this suit, that suit and that
24 suit, so we ask you to modify the judgment, and give
25 us back the \$386 million that we put up." Is there

1 anything that stops that from happening?

2 MR. BOCCUZZI: I don't think there's
3 anything that allows for that to happen. The finding
4 of a...

5 JUDGE LEVAL: My question is, is there
6 anything that stops it? Anything that prevents it?

7 MR. BOCCUZZI: I think this Court's
8 precedent in SAOS1 and SAOS2 and McLaughlin [phonetic]
9 which requires judgments that be connected to the
10 amount of damages owed to the plaintiffs or the
11 plaintiff class. I think that would—that would have
12 to be the case Your Honor. And, in either—I think in
13 SAOS2...

14 JUDGE RAGGI: I think the reality here is
15 that we are unlikely to see Argentina deposit a sum of
16 money in the amount of any class judgment rather the
17 class judgment would be entered and the Plaintiffs
18 would then chase around after assets to attach as
19 you've just stated a moment ago some of them of which
20 may have to be sold to realize their value, right?

21 MR. BOCCUZZI: Right, you'd have...

22 JUDGE RAGGI: On the other hand, the
23 alternative is that if we use some of the options you
24 say individuals would not simply you know, go up to a
25 cash box out of which Argentina would pay their bonds

1 each of them individually would now have to go after
2 Argentina's assets. Isn't that the alternative that
3 we're left with?

4 MR. BOCCUZZI: No, I think what Judge
5 Broussea originally contemplated was that you would
6 have this claims presentation process, pre-judgment,
7 and then that would be reflected in a judgment for
8 this group of Plaintiffs. Whether you called that a
9 class judgment or an individual...

10 JUDGE RAGGI: So people would line up and
11 when the 100 people who demonstrated that they were
12 owed money, the amount would be entered in that amount
13 and then the Plaintiffs' attorneys would go after
14 Argentina's assets?

15 MR. BOCCUZZI: Correct.

16 JUDGE RAGGI: All right. Why don't we hear
17 from—I know you want to reserve some time for
18 rebuttal. Why don't we hear from the Plaintiff?

19 MR. BOCCUZZI: Thank you Your Honor.

20 JUDGE RAGGI: Thank you.

21 MS. JENNIFER SCULLION: Good morning and may
22 I please the Court? Jennifer Scullion for the class
23 Plaintiff. Judge Broussea's decision--

24 JUDGE RAGGI: Ms. Sullivan?

25 MS. SCULLION: Scullion, thank you.

JUDGE LEVAL: Let me share with you my concern and obviously you would have intended on addressing it but hopefully you'll do it immediately and directly and tell me why I'm wrong. It's been a good bit of discussion here about who might be paid and how much that will be. And yet it seems to me in viewing this case, perhaps simplistically that this has all been done and no one seems to want to follow prior directions. And by that I mean that you all wanted at the outset to have the class defined as holders at any time. District Court disagreed and said no they have got to be continuous holders at the time the claim the judgment. We affirm that. We said yes, that is what the class is here. Then went back to the district court and by the way, during the course of that first appeal, I don't believe you appealed the designation of the class. You did not maintain your position before us, that continuous holder was wrong. I believe Argentina raised the issue with some perhaps -- but we held continuous holder is the proper designation of the class. It went back to the District Court at our direction to look at the aggregated judgment and how do you get there. It then came back to us in respect of the aggregate judgment and we vacated that. However, you

1 did not present to us on the second appeal any
2 infirmity in respect to whether the class was properly
3 designated as a continuous hold. So twice you had the
4 opportunity on appeal to question that issue and you
5 did not. We sent it back to the District Court with a
6 formula to deal with the aggregate judgment. Again,
7 perhaps reduced to a simplicity the District Court
8 seemed to find that a little too complicated and so
9 the District Court upon your motion at that time after
10 having failed to appeal it twice, reverted to your
11 definition of the class as being holder rather than
12 continuous holder. So at bottom, it seems to me, that
13 you have forfeited that argument. The District Court
14 was without power to redefine the class given this
15 Court's actions and your lack of action in Seijas I
16 and in Seijas II. What say you...

17 MS. SCULLION: Thank you, Your Honor. As
18 Judge Leval point out, the mandate in Seijas I and
19 Seijas II, the mandates did not restrain the District
20 Court from exercising its discretion under 23C1C to
21 revisit the class definition due to manageability
22 issues that the Court observed developed over time in
23 part because the Court was observing what this Court
24 had directed as required in order to have aggregate
25 judgments for a continuous holder class. The District

1 Court when it did...

2 JUDGE LEVAL: Oh we did give the District
3 Court a formula to follow. The District Court said
4 this is too hard. I'm going to redefine the class.

5 MS. SCULLION: That is correct. This Court
6 gave the District Court instructions with how to
7 determine an aggregate judgment for a continuous
8 holder class definition. All they...

9 JUDGE LEVAL: Had you let that process play
10 out, then you would have had an argument to make and
11 in the third appeal that the method by which the
12 judgments were achieved was either erroneous or
13 impossible and that the Second Circuit was wrong in
14 the formula it suggested in Seijas II.

15 MS. SCULLION: Your Honor, we don't believe
16 the...

17 JUDGE LEVAL: Instead you sought to redo the
18 class.

19 MS. SCULLION: We don't believe the Court
20 was wrong in terms of the formula for determining an
21 aggregate judgment and for continuous holder class.
22 And on remand from Seijas II, we did attempt to comply
23 with the instructions this Court issued. We did ask
24 for discovery to try to determine with more
25 specificity what the actual volume of continuous

1 versus non-continuous holders was. When it became
2 clear that that information could only be gleamed
3 through voluminous burdensome third party discovery
4 including discovery into individual accounts outside
5 of the United States.

6 JUDGE LEVAL: The loss of litigation.

7 MS. SCULLION: And, Your Honor, it is in
8 fact a manageability issue under Rule 23. And Rule 23
9 C1C was specifically designed to allow a district
10 court to revisit class certification in light of
11 manageability issues that often do develop as the case
12 progresses.

13 JUDGE LEVAL: But made those arguments in
14 the two prior appeals.

15 MS. SCULLION: That's correct.

16 JUDGE LEVAL: And never had any complaint
17 about the classification being continuous holders.

18 MS. SCULLION: That's correct and that's
19 because we and the District Court believed that the
20 continuous hold definition was manageable. We tried
21 to manage it. We tried to get an expert to opine with
22 respect to what the amount of a continuous holder
23 judgment should be. This Court did not find that
24 sufficient. On a remand we tried to take discovery
25 from Argentina to determine what the volume of the

1 continuous holder class would be. They said they did
2 not have the information. And, Your Honor, we did not
3 cross appeal the continuous holder definition earlier
4 in part because again we thought it was manageable.
5 The District Court thought it was manageable. But
6 two, in fact the judgments that we were--that were
7 entered did fully satisfy the plaintiff classes. They
8 literally were for the full amount of the outstanding
9 bonds other than those that had been exchanged or
10 opted out through other litigation.

11 JUDGE RAGGI: Right.

12 MS. SCULLION: So there literally was no...

13 JUDGE LEVAL: And you would like to
14 represent all the holders which would have brought a
15 greater judgment rather than continuous holders.

16 MS. SCULLION: The amount of the...

17 JUDGE LEVAL: So you did have an incentive.

18 MS. SCULLION: The amount of the judgment
19 was in fact--and that was what this Court found to be
20 the problem with the judgments was that the amount of
21 the judgments was the amount for a holder class, not
22 for continuous holder. We literally were not
23 aggrieved by the full amount of the judgment and could
24 not have gotten any more money on a judgment under a
25 holder class definition.

1 JUDGE RAGGI: My concern which follows from
2 Judge Straub is that the order of this Court or the
3 instructions of this Court did not give a lot of
4 flexibility. Like if there was a problem with
5 reasonable accurate estimates, the District Court
6 shall take whatever other action it deems appropriate.
7 Rather it was as if no reasonably accurate non-
8 speculative estimate can be made according to the
9 formula we gave. Then determine how to proceed with
10 awarding damages on an individual basis. I mean that
11 has been a long litigation. And while there are
12 certainly advantages to it being pursued as a class on
13 some levels, I think the instructions suggest that if
14 this formula wasn't going to work after having come up
15 to us twice, then figure out how to proceed on an
16 individual basis. So tell us why that wasn't the
17 instruction that should have been followed. When the
18 problems you have identified emerged.

19 MS. SCULLION: And that was the instruction
20 with respect to the continuous holder class definition
21 in how to calculate aggregate...

22 JUDGE RAGGI: That was the class that had
23 now--

24 MS. SCULLION: That's right.

25 JUDGE RAGGI: --proceeded through years of

1 litigation. So it's hardly surprising.

2 MS. SCULLION: And again, those instructions
3 were tend to be followed below and that's when the
4 District...

5 JUDGE RAGGI: The last one was not.

6 MS. SCULLION: That's--yes that's because
7 the District Court correctly agreed with us, we
8 believe, that became evident that there were
9 manageability issues with the continuous hold
10 definition. In Seijas I....

11 JUDGE RAGGI: And if there were, if there
12 were so that no non-speculative estimate could be
13 made, then what the District Court was to do was to
14 determine how to proceed with awarding damages on an
15 individual basis. What's your argument for how the--
16 why the District Court did not have to follow that?

17 MS. SCULLION: And that is because it's
18 inherent in what 23C13 is designed to do. It is
19 designed specifically to allow a District Court to
20 revisit class certification issues from manageability.

21 JUDGE RAGGI: Yes may allow district judges
22 to do all kinds of things. But in particular cases
23 especially once there has been a lot of litigation, an
24 instruction to do X even though a rule may also allow
25 Y doesn't seem to me to let you just say well the rule

1 says we can do more. There was an instruction in this
2 case given the extent of litigation time that had been
3 taken up by the parties and the courts.

4 MS. SCULLION: So two things on that. This
5 court's precedent both in Spampo and in In Re IPO,
6 made clear that mandates really do address only the
7 issues that are before the Court. And if it was
8 before this Court was how to calculate aggregate
9 judgments under continuous holder definitions.

10 JUDGE RAGGI: That's not exactly right is
11 there was a judgment before the Court and that
12 judgment was appealed. And we vacated it.

13 MS. SCULLION: Yes.

14 JUDGE RAGGI: So we weren't, you know,
15 deciding some abstract--we vacated that judgment and
16 we gave the District Court instructions as to this.
17 But let me move you beyond this. Your adversary's
18 position is that even if the District Court could
19 redefine the class, what he has done is come up with a
20 class that presents its own problems specifically with
21 respect to ascertain ability. You heard my attempt at
22 a hypothetical with Mr. Bocuzzi about the possibility
23 that both a person who opted in and a person who opted
24 out would sell in the secondary market to the same
25 holder. That holder would now hold both types of

1 bonds. Could sell part of them down to some yet
2 fourth individual. And as this goes on and on, it
3 becomes impossible to ascertain who's opted in and
4 who's opted out. So tell me why I should not be
5 troubled by ascertain ability here.

6 MS. SCULLION: So for a number of reasons.
7 First ascertain ability I think as Judge Leval was
8 alluding is in fact a relatively low bar and only
9 requires there to be an objective means to determine
10 class membership that indisputably exists here because
11 individuals will have account statements to show do
12 they hold, do they not hold. On that there...

13 JUDGE RAGGI: Well tell us whether they hold
14 bonds that are on the opt out date were opted in or
15 out.

16 MS. SCULLION: So on that, as of the notice
17 is going to go out for opt outs. Will include and if
18 it's not sufficient, it can be inventive to include
19 it's not been decided yet by District Court. Will
20 include instructions to all holders. If you--the opt
21 out date is relevant, if you sell after the opt out
22 date to whomever you sell will be bound by your
23 decision about whether to opt it out or not.

24 JUDGE RAGGI: Right.

25 MS. SCULLION: And that notice will persist

1 out there in the marketplace, it will go out through...

2 JUDGE RAGGI: And how will you identify
3 those bonds when someone shows up looking to be paid
4 as part of the class?

5 MS. SCULLION: Right. So first of all, with
6 respect to when that would occur, Judge Leval I think
7 is correct that that will occur post judgment. I
8 would note on the continuous hold...

9 JUDGE RAGGI: I'm sorry, what will occur?

10 MS. SCULLION: The presentment of claims and
11 determining.

12 JUDGE RAGGI: Okay.

13 MS. SCULLION: Okay.

14 JUDGE RAGGI: But not necessarily the
15 judgment and then we're calculating the judgment based
16 on what?

17 MS. SCULLION: Yeah the judgment will be
18 based on the finite set...

19 JUDGE RAGGI: You opt in those only who's
20 opted in.

21 MS. SCULLION: Those who are left after the
22 opt out. Correct.

23 JUDGE RAGGI: Yeah.

24 MS. SCULLION: Or have not otherwise
25 exchanged or in other litigation. We will get to a

1 judgment date.

2 JUDGE RAGGI: Right.

3 MS. SCULLION: That will determine who the
4 holders then are for purposes of the judgment as...

5 JUDGE RAGGI: We don't understand that. How
6 will we know who the holders are?

7 MS. SCULLION: Sure. When the holders come
8 to present their claim post judgment, the first
9 question that is going to be asked is when did you
10 acquire that bond? And again the account statements
11 will show when they acquired. Anyone who acquired
12 after the...

13 JUDGE RAGGI: After the opt out date.

14 MS. SCULLION: anyone who acquired after the
15 opt out date is going to have to prove up their chain
16 of acquisition. And they're going to get notice of
17 that in the notice for opt out. The markets going to
18 understand that if you buy and sell these bonds, after
19 the opt out date, be sure that you know what you are
20 doing because there will be consequences. And if you
21 want to claim class membership on bonds that you
22 purchased after the opt out date you will have to
23 prove up your chain of acquisition to show you did not
24 acquire it for someone who opted out. That is a
25 manageable process. It is certainly a supervisor

1 process to reverting to individualized, individual
2 bond holders having to try to collect enforce on
3 judgments against Argentina which has made perfectly
4 clear to everyone including the largest bond holders
5 that it is not going to cooperate. It's not going to
6 pay. It's not even going to talk settlement and in
7 fact it's going to dishonor this Courts...

8 JUDGE RAGGI: My understanding is the - -
9 mark when it's not buying actual bonds. But
10 beneficial interest, have I mis--

11 MS. SCULLION: I apologize. I did not hear
12 you.

13 JUDGE RAGGI: I am sorry. I thought that
14 one was not buying actual bonds but beneficial
15 interests.

16 MS. SCULLION: That's correct. And the
17 beneficial interests are recorded on individual
18 account statements. The account statements say when
19 you purchased and the amount that you hold and again
20 so after judgment, if someone has--comes in with an
21 account statement that shows they purchased after the
22 opt out date, it'll be incumbent on them to prove up
23 their chain of acquisition. And again these bonds,
24 the secondary market is not just some run of the mill
25 regular bond trading market. This is distressed debt.

1 This is distressed debt that is followed keenly by all
2 of the papers. Everyone pays attention to every legal
3 proceeding. Anyone who buys these buys post the opt
4 out date is not doing it because they think Argentina
5 can pay that.

6 JUDGE LEVAL: Mr. Boccuzzi raises the
7 problem of holders who subsequent to the judgment go
8 and bring individual actions separate actions. How to
9 account for those with respect to the administration
10 of this case?

11 MS. SCULLION: Yeah, and I was--I found Mr.
12 Boccuzzi's response curious because if someone brings
13 an action after judgment, again the first question
14 Argentina is going to ask is when did you acquire
15 those bonds to see whether in fact if they acquired
16 those bonds, from a member of the class, Argentina's
17 next motion will be to dismiss because that lawsuit is
18 barred by the judgment in the classes here. Those
19 people if they're members of the class, they cannot
20 post judgment, go and bring separate lawsuits. That's
21 a nature of a class action. It's what protects
22 Argentina from double recovery. There is no chance of
23 double recovery when you have a judgment. The
24 judgment will merge and extinguish Argentina's payment
25 obligations with respect to the bonds. There may be

1 other obligations with respect to the bonds like Perry
2 Pasui [phonetic] that may persist. But there is no
3 more ability to bring another lawsuit on the bond once
4 a judgment has been entered for that bond in the
5 class--

6 JUDGE RAGGI: Right.

7 MS. SCULLION: --here.

8 JUDGE RAGGI: Thank you very much.

9 MS. SCULLION: Thank you.

10 JUDGE RAGGI: Mr. Bocuzzi you have
11 rebuttal.

12 MR. BOCCUZZI: Thank you. Just briefly. On
13 the issue of this question of the continuous holder
14 definition, this was not a new issue that caught
15 counsel by surprise after the second remand from this
16 Court. In the first oral argument in Seijas I counsel
17 was asked why should there be a judgment that is
18 virtually certainly overstated and probably
19 substantially so. Plaintiff's counsel answer was I
20 would suggest a better remedy for that would be to
21 modify the class definition to all current holders.
22 Then you take that issue away. So this idea of
23 having--and they say current holders which is
24 different from holder at any time up to judgment. But
25 the point is the same. This issue is something

1 they're aware of. They litigated for in the first
2 round, they lost, and the continuous holder definition
3 has been what's governed in this case since. And
4 rightfully so because that tracks what any normal
5 litigant would do which is you would bring a complaint
6 when you held a defaulted bond. And if you held it at
7 the end when there is a judgment, you would collect on
8 it. What is being described here by Ms. Scullion is
9 not only contrary to Seijas II, the idea that we're
10 going to have a judgment and then in post-proceedings
11 figure out whether it needs to be adjusted. It's also
12 completely contrary to what is supposed to be a
13 superior and more efficient method of adjudication.
14 This is a class action where we're exclusively being
15 told there will be subsequent litigation when people
16 who bought after the opt out have to then prove that
17 they bought it from someone who didn't opt out.

18 JUDGE RAGGI: Well what I understood her to
19 say in order to solve my ascertain ability problem was
20 that the judgment will be calculated by reference to
21 those who did not opt out on the opt out date.

22 MR. BOCCUZZI: Correct.

23 JUDGE RAGGI: And that thereafter when
24 claimants come forward, if they acquired after that
25 opt out date, it will be their responsibility to trace

1 their holdings back to someone who did not opt out.
2 Why doesn't that solve the concern? You just
3 identified and ascertain ability?

4 MR. BOCCUZZI: Because then if they do, if
5 it is in fact shown that they bought through a chain
6 that leads to an opt out, then we will be in the
7 situation of a time one having an overstated judgment
8 which I would submit is a consistent...

9 JUDGE RAGGI: How about they're saying that,
10 they're saying that that opt out holders claims would
11 not have been factored into the judgment. So you know
12 if you have a 100 people and 20 of them opt out,
13 they'll only calculate the judgment based on the
14 holdings of the remaining 80. And that will be all
15 that can be attached or seized or paid or whatever.

16 MR. BOCCUZZI: So then, sorry, then the
17 converse which is that the person who bought, bought
18 through a chain from someone who did not opt out, then
19 we would have a situation where if they can establish
20 that notice wasn't satisfied as to them, they would
21 say I have my individual action, I'm not in your class
22 and the class judgment will have been overstated. And
23 that's contrary to Seijas I and Seijas II, putting
24 aside the--I'm not ready to accept...

25 JUDGE RAGGI: Judge Leval's suggestion that

1 well as soon as that happens, you ask for that
2 percentage of your holdings back.

3 MR. BOCCUZZI: You would have to do that.

4 But again Seijas II talks about the use of 60B to fix
5 the wrong judgment and they say that's not acceptable.
6 And again I'm not willing to concede as well that you
7 could do that tracing to figure out the opt in, opt
8 out. This was an argument that was never discussed
9 below as part of manageability. But I would also
10 submit that that process is a lot more difficult than
11 just having people come forward now and present their
12 claims which again is contemplated in this Court's
13 class certification and class action jurisprudence and
14 is what the judge originally said when he certified
15 these classes.

16 JUDGE RAGGI: Thank you.

17 MR. BOCCUZZI: Thank you.

18 JUDGE RAGGI: We're going to take the matter
19 under advisement.

20 [END OF HEARING]

C E R T I F I C A T E

I, Deana M. Smith, certify that the foregoing transcript of proceedings in the United States Court of Appeals for the Second Circuit of Eduardo Puricelli, et al. v. The Republic of Argentina, Index No. 14-2104 (L) was prepared using the required transcription equipment and is a true and accurate record of the proceedings to the best of my ability. I further certify that I am not connected by blood, marriage or employment with any of the parties herein nor interested directly or indirectly in the matter transcribed.

Signature: Deana M. Smith

Date: June 30, 2015

C E R T I F I C A T E

I, Lynn M. Reinhardt, certify that the foregoing transcript of proceedings in the United States Court of Appeals for the Second Circuit of Eduardo Puricelli, et al. v. The Republic of Argentina, Index No. 14-2104 (L) was prepared using the required transcription equipment and is a true and accurate record of the proceedings to the best of my ability. I further certify that I am not connected by blood, marriage or employment with any of the parties herein nor interested directly or indirectly in the matter transcribed.

Signature: Lynn M. Reinhardt

Dated: August 13, 2015

Exhibit B

*SILVIA SEIJAS, et al. VS.
THE REPUBLIC OF ARGENTINA*

*MICHAEL ADLER
October 13, 2010*



126 East 56th Street, Fifth Floor New York, New York 10022

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*Original File 94885.TXT
Min-U-Script® with Word Index*

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 SILVIA SEIJAS, et al.,

4 Plaintiffs,

5 - against -

6 THE REPUBLIC OF ARGENTINA,

7 Defendant.

8 INDEX NO.: 04 Civ. 400 (TPG)

9 SILVIA SEIJAS, et al.,

10 Plaintiffs,

11 - against -

12 THE REPUBLIC OF ARGENTINA,

13 Defendant.

14 INDEX NO.: 04 Civ. 401 (TPG)

15 (CAPTION CONT'D ON FOLLOWING PAGE)

16 860 Riverside Drive
17 New York, New York

18 October 13, 2010
19 2:14 p.m.

20 Deposition of MICHAEL ADLER,
21 pursuant to Notice, before Stacey Raikes, a
22 Notary Public of the State of New York.

23 ELLEN GRAUER COURT REPORTING CO. LLC
24 126 East 56th Street, Fifth Floor
New York, New York 10022
212-750-6434
25 REF: 94885

1 (CONT'D FROM PREVIOUS PAGE)
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 CESAR RAUL CASTRO,
5 Plaintiff,
6 - against -
7 THE REPUBLIC OF ARGENTINA,
8 Defendant.
9 INDEX NO.: 04 Civ. 506 (TPG)
10 HICKORY SECURITIES LTD.,
11 Plaintiff,
12 - against -
13 THE REPUBLIC OF ARGENTINA,
14 Defendant.
15 INDEX NO.: 04 Civ. 936 (TPG)
16 ELIZABETH ANDREA AZZA, et al.,
17 Plaintiffs,
18 - against -
19 THE REPUBLIC OF ARGENTINA,
20 Defendant.
21 INDEX NO.: 04 Civ. 937 (TPG)
22 (CAPTION CONT'D ON FOLLOWING PAGE)
23
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1 (CONT'D FROM PREVIOUS PAGE)
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 ELIZABETH ANDREA AZZA, et al.,
5 Plaintiffs,
6 - against -
7 THE REPUBLIC OF ARGENTINA,
8 Defendant.
9 INDEX NO.: 04 Civ. 1085 (TPG)
10 EDUARDO PURICELLI,
11 Plaintiff,
12 - against -
13 THE REPUBLIC OF ARGENTINA,
14 Defendant.
15 INDEX NO.: 04 Civ. 2117 (TPG)
16 RUBEN DANIEL CHORNY,
17 Plaintiff,
18 - against -
19 THE REPUBLIC OF ARGENTINA,
20 Defendant.
21 INDEX NO.: 04 Civ. 2118 (TPG)
22
23
24
25

1 A P P E A R A N C E S:

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1 ----- I N D E X -----
2 WITNESS EXAMINATION BY PAGE
3 MICHAEL ADLER MR. BOCCUZZI 9
4
5

6 ----- E X H I B I T S -----

7 ADLER DESCRIPTION FOR I.D.
8 Exhibit 1 Declaration 8
9 Exhibit 2 Marked up declaration 29
10 Exhibit 3 Puricelli Twelve and
11 Three-Eighths Percent 41
12 Exhibit 4 Defaulted Debt Trading
13 Sinks as Elliott Bets on
14 Courts: Argentina Credit 75
15
16

17 (Exhibits retained by Ms. Scullion)
18
19
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21
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1 S T I P U L A T I O N S
2

3 IT IS HEREBY STIPULATED AND AGREED
4 by and between the attorneys for the
5 respective parties herein that the filing
6 and sealing of the within deposition be
7 waived.

8 IT IS FURTHER STIPULATED AND AGREED
9 that all objections, except as to the form
10 of the question, shall be reserved to the
11 time of the trial.

12 IT IS FURTHER STIPULATED AND AGREED
13 that the within deposition may be sworn to
14 and signed before any officer authorized to
15 administer an oath with the same force and
16 effect as if signed and sworn to before the
17 Court.

18
19
20 - ooo -
21
22
23
24
25

1 ADLER

2 Q. And it's not part of your opinion as
3 to what that number is?

4 A. No. Certainly not.

5 Q. And you're not aware of how you
6 would model it, if it could be done?

7 MS. SCULLION: Objection. Asked and
8 answered and same objections as before.

9 Q. You can answer.

10 A. There's no model that you'd use.

11 Q. And why is there no model?

12 MS. SCULLION: Same objections.

13 Lacks foundation. He's not been asked to
14 give an expert on opinion on this matter
15 in this case.

16 Q. You may answer.

17 A. You have to ask the people how much
18 they own.

19 Q. Or the people who own the bonds need
20 to come forward and say I own this much?

21 A. Yeah.

22 MS. SCULLION: Same objections.

23 Q. Right.

24 MR. BOCCUZZI: I have no further
25 questions at this time. I guess one thing

1 C E R T I F I C A T E

2
3 STATE OF NEW YORK)

4 :ss

5 COUNTY OF NEW YORK)

6
7 I, STACEY RAIKES, a Notary Public
8 within and for the State of New York, do hereby
9 certify:

10 That MICHAEL ADLER, the witness
11 whose deposition is hereinbefore set forth, was
12 duly sworn by me and that such deposition is a
13 true record of the testimony given by such
14 witness.

15 I further certify that I am not
16 related to any of the parties to this action by
17 blood or marriage; and that I am in no way
18 interested in the outcome of this matter.

19 IN WITNESS WHEREOF, I have hereunto
20 set my hand this 14th day of October, 2010.

21
22 
23
24

STACEY RAIKES